

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35219

STATE OF IDAHO,)	2009 Unpublished Opinion No. 643
)	
Plaintiff-Respondent,)	Filed: October 21, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
JOSE SARABIA-LEON,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Gooding County. Hon. R. Barry Wood, District Judge.

Judgment of conviction and concurrent unified sentences of twenty-five years, with seven years determinate, for kidnapping and fifteen years, with five years determinate, for attempted robbery, affirmed; order denying I.C.R. 35 Motion, affirmed.

A. Elizabeth Burr-Jones, Burley, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Daniel W. Bower, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge, GRATTON, Judge
and PERRY, Judge Pro Tem

PER CURIAM

Jose Sarabia-Leon was charged with second degree kidnapping, burglary and attempted robbery, and with the assistance of an interpreter, reviewed the charges and pled not guilty. Later, at a change of plea hearing, with the assistance of an interpreter, Sarabia-Leon pled guilty to second degree kidnapping, Idaho Code §§ 18-4501(4), 18-4503, and to attempted robbery, I.C. §§ 18-6501, 18-305, and the state agreed not to seek a firearm enhancement. Following a sentencing hearing whereat Sarabia-Leon was assisted by an interpreter, the district court sentenced Sarabia-Leon to concurrent unified terms of twenty-five years, with seven years determinate, for the kidnapping charge and to fifteen years, with five years determinate, for the

attempted robbery charge. Sarabia-Leon appealed from his judgment of conviction, contending that the district court abused its discretion by imposing an excessive and unreasonable sentence; that he was entitled to an interpreter at the change of plea and sentencing hearings; and that he was improperly denied an adequate opportunity to present evidence on these issues when his Idaho Criminal Rule 35 motion was decided without a hearing or the opportunity to present additional evidence.

We must first address Sarabia-Leon's contention that he was entitled to an interpreter in the district court. The record reflects that at all times complained of Sarabia-Leon was afforded an interpreter. The court minutes denote the presence of an interpreter and the transcripts include the district court's recognition and swearing of an interpreter. At sentencing, the interpreter interrupted Sarabia-Leon to ask him to speak slower. Therefore, to the extent that Sarabia-Leon's claim is that he was denied an interpreter, that claim is belied by the record. In addition we note that to the extent Sarabia-Leon is attempting to argue that the interpreter was insufficient, he has failed to substantiate his claim. He cites to nowhere in the record where the interpreter was inadequate, and makes no showing that problems with interpretation existed. Accordingly we find this issue to be completely without merit.

Sarabia-Leon's second claim of error is that his sentence is excessive. Where a sentence is within the statutory limits, it will not be disturbed on appeal absent an abuse of the sentencing court's discretion. *State v. Hedger*, 115 Idaho 598, 604, 768 P.2d 1331, 1337 (1989). We will not conclude on review that the sentencing court abused its discretion unless the sentence is unreasonable under the facts of the case. *State v. Brown*, 121 Idaho 385, 393, 825 P.2d 482, 490 (1992). In evaluating the reasonableness of a sentence, we consider the nature of the offense and the character of the offender, applying our well-established standards of review. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 170 P.3d 387 (2007).

Finally, Sarabia-Leon complains that the district court erred in not conducting a hearing on his motion for reduction of the sentence. We disagree. The choice of whether to hold a hearing on a motion under I.C.R. 35 is committed to the trial court's discretion. I.C.R. 35; *State v. Findeisen*, 119 Idaho 903, 905, 811 P.2d 513, 515 (Ct. App. 1991). A trial court may abuse its

discretion if it unduly limits the information it considers before ruling upon the I.C.R. 35 motion. *Id.*; *State v. Puga*, 114 Idaho 117, 118, 753 P.2d 1263, 1264 (Ct. App. 1987); *State v. Torres*, 107 Idaho 895, 898, 693 P.2d 1097, 1100 (Ct. App. 1984). However, Sarabia-Leon has not shown that the district court unduly limited the information that it considered in this case. Sarabia-Leon does not identify any evidence that he might have produced at a hearing which he could not have produced through affidavits submitted with his motion. Where the movant has not submitted any additional information in support of a request for reduction in a sentence, the discretionary decision of the court to deny the request without a hearing will not be disturbed. *State v. Ramirez*, 122 Idaho 830, 836, 839 P.2d 1244, 1250 (Ct. App. 1992). In addition, as noted by the state, Sarabia-Leon appealed directly from his judgment of conviction. He did not thereafter augment the record on appeal with his Rule 35 motion or the district court's denial thereof. Therefore Sarabia-Leon has failed to show any error by the district court in denying his motion.

For the foregoing reasons, Sarabia-Leon's judgment of conviction and sentence and the district court's denial of his motion for Rule 35 relief are affirmed.